

Remediation and Redevelopment Division

Michigan Department of Environment, Great Lakes, and Energy

Performance Bond Part 213.doc
04/21/2020

PERFORMANCE BOND PART 213

This document provides instructions on the use of a Performance Bond to fulfill the requirements for financial assurance pursuant to Section 21309a(2)(f) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* This document and attached model document are provided to the public as preliminary guidance as to the content, format, and terms of the Financial Assurance Mechanism and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Pursuant to Section 21309a of the NREPA, if initial actions under Section 21307 have not resulted in the completion of corrective action, an owner or operator that is liable under Section 21323a shall prepare a corrective action plan to address contamination at the site. If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system is required.

If a person elects to use a Performance Bond to meet their financial assurance obligations, the Performance Bond must be executed between the parties below. The Performance Bond shall be:

1. Issued by a Surety that is an insurer authorized to transact the business of surety and fidelity insurance in the State of Michigan and is an acceptable surety on federal bonds as listed in Circular 570 of the United States Department of Treasury.
2. Worded in accordance with the model Performance Bond. Any modification to the model language may only be made with the concurrence of EGLE.
3. Executed on the letterhead of the Surety and be between EGLE, the Surety, and the person or entity submitting the corrective action plan. It must also name EGLE as the sole beneficiary.
4. In an amount at least equal to, or greater than, the amount necessary to pay for all monitoring, operation, and maintenance to assure the effectiveness and integrity of the corrective action for the time frame(s) specified in the corrective action plan.
5. Approved by EGLE and can be replaced at the direction of EGLE.
6. Issued in a manner that can only be terminated at the direction of EGLE.

Please contact Mr. Brad Ermisch, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), EGLE, at ermischb@michigan.gov or 517-275-1173 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Copy and paste the text portion of the attached model document onto appropriate letterhead. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as **[regular bold font within bold brackets]**.

--END OF GUIDANCE AND INSTRUCTIONS--

PERFORMANCE BOND MODEL

PERFORMANCE BOND

Surety Name: **[insert name of Surety]**

Surety Address: **[insert Surety address]**

Surety Bond Number: **[insert bond number]**

Total Amount of Bond: **[\$_____,____]**

Effective Date: **[insert effective date]**

Principal: **[insert name of Principal]**

Principal's Business Address: **[insert Principal's address]**

Site Name: **[insert Site name]**

Site Address: **[insert Site address]**

EGLE Facility ID Number: **[insert Facility ID number]**

Confirmed Release Number: **[insert Confirmed Release Number of the
Release addressed by the Corrective Action]**

RECITALS

1. Section 21309a of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301, *et seq.* states that if initial actions have not resulted in the completion of corrective action, an owner or operator that is liable under Section 21323a shall prepare a corrective action plan to address contamination at the site. If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system is required. On ***[insert date that Corrective Action Plan was submitted to EGLE], [insert name of person submitting the Corrective Action Plan]*** (Principal) submitted a corrective action plan to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) for ***[insert name and address of Site]***. The Principal is required to provide financial assurance, in a mechanism acceptable to EGLE, to pay for the corrective action plan requirements.
2. The estimate to pay for the performance of the corrective action plan requirements (Cost Estimate) is: ***[\$[insert numeric amount]***.
3. The Principal is providing this Performance Bond (Bond) to EGLE to fulfill its obligations under Part 213. ***[Insert name of insurer]*** (Surety) is an insurer who is authorized to transact the business of surety and fidelity insurance in the State of Michigan and is an acceptable surety on federal bonds as listed in Circular 570 of the United States Department of Treasury. The Principal and Surety, and their heirs, executors, administrators, successors, and assigns, jointly and severally, are firmly bound unto EGLE to fulfill their obligations as set forth in the Bond.
4. The definitions of the terms used in this Bond are the same as those used in Part 213.

NOW, THEREFORE, the Principal and Surety agree to the following:

5. This Bond as issued is sufficient to cover the Cost Estimate for performing the activities in the corrective action plan. Sixty (60) days prior to the five (5) year anniversary of the effective date of this Bond and each subsequent five (5) year anniversary, the Principal shall provide to EGLE a report containing the Cost Estimate for the previous five (5) year period and a Cost Estimate for the amount of funds necessary to assure long-term corrective action costs for a thirty (30) year period. The Bond shall be adjusted as needed to account for long-term corrective action costs for this thirty (30) year period. Adjustments to the amount of the Bond may only be made as follows:
 - (a) If there is an increase in the Cost Estimate for performing the corrective action plan requirements, the Principal, within sixty (60) days of becoming aware of the increased costs, shall increase the amount of financial assurance by making arrangements with the Surety for an increase in this Bond to an amount at least equal to the increased Cost Estimate and submitting evidence of such increase to EGLE, by submitting a replacement performance bond, or by establishing an alternative financial assurance mechanism that is acceptable to EGLE to assure the performance of the corrective action plan requirements.

The Surety acknowledges that the Principal is obligated to provide increased financial assurance to pay for the performance of the corrective action plan requirements if either of the following occur: (i) the Principal's five (5) year Cost Estimate update for performing the corrective action plan requirements, which the Principal is required to conduct, shows that the Principal will incur costs in excess of the Cost Estimate; or (ii) the Principal is required to implement a modification to the corrective action and that modification affects the corrective action plan requirements such that the Principal will incur costs in excess of the Cost Estimate.

- (b) If any five (5) year Cost Estimate conducted by the Principal is less than the Cost Estimate amount provided for by this Bond, the amount of this Bond may be reduced to that lesser amount following the Principal and Surety's receipt of written approval for such reduction by EGLE.
6. This Bond shall continue in full force and effect for a period beginning with the effective date of this Bond and ending only when this Bond is terminated or cancelled. This Bond may only be terminated or cancelled when the Principal has satisfied one of the following conditions (a) through (c) below and the Principal and Surety have received written authorization for such termination or cancellation from EGLE.
- (a) The performance of the corrective action plan requirements is no longer necessary.
 - (b) EGLE has determined that a financial assurance mechanism is no longer necessary.
 - (c) The Principal has provided an alternative financial assurance mechanism acceptable to EGLE to assure the performance of the corrective action plan requirements.
7. The Surety shall become liable as provided for in this Bond only when the Principal has failed to perform the corrective action plan requirements or has failed to provide alternative financial assurance acceptable to EGLE as provided for in this Bond. If the Principal fails to meet these obligations and the EGLE authorized representative (Remediation and Redevelopment Division Director) has issued a written notification to the Principal and Surety regarding the Principal's failure to comply, the Surety shall do the following as directed by EGLE within thirty (30) days.
- (a) If the Principal has failed to perform the corrective action plan requirements, the Surety shall either perform those requirements in accordance with the corrective action or make payment to EGLE for the full amount guaranteed by this Bond.
 - (b) The Surety shall make payment to EGLE for the full amount of EGLE corrective actions that EGLE performs.
 - (c) If the Principal has failed to provide an alternative financial assurance mechanism within sixty (60) days of receipt of the Surety's intent to cancel this Bond as specified in Paragraph 10 of this Bond, the Surety shall make payment to EGLE for the full amount guaranteed by this Bond.
8. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder unless and until such payment or payments amount in the aggregate to the amount of this Bond; however, in no event shall the Surety's obligation hereunder exceed the amount of this Bond.

9. The Surety agrees that any amendments to the corrective action or to any applicable laws, statutes, rules, or regulations shall not affect its obligations with respect to this Bond, except that any modifications of the corrective action that cause an increase or decrease in the amount of financial assurance shall be handled in accordance with Paragraph 5.
10. The Surety may initiate the process to cancel this Bond by sending written notice of its intent to cancel by certified mail to the Principal and to EGLE. Within sixty (60) days of EGLE's receipt of the Surety's intent to cancel this Bond, the Principal must either provide an extension of this Bond or provide an alternative financial assurance mechanism to EGLE. The Surety shall not cancel this Bond during the one hundred and twenty (120) day period after the Principal and EGLE receive the notice of intent to cancel. However, the Surety may cancel this Bond after the one hundred and twenty (120) day period or upon its receipt of written authorization for such cancellation from EGLE.
11. The Principal may terminate this Bond by sending written notice to the Surety and EGLE, provided; however, such termination shall only become effective if the Principal has met the requirements of Paragraph 6. The Surety may then terminate this Bond when the Principal and Surety have received written authorization for such termination from EGLE.
12. If EGLE determines that either the Principal or Surety has not complied with any of the terms or conditions of this Bond, EGLE shall have recourse to the rights created under this Bond. EGLE reserves all its other rights against the Principal under the applicable statutes.

In witness whereof, the Principal and Surety have executed this Bond, affixed their seals, and attached their justification for power of attorney as of the effective date written above.

The persons whose signatures appear below hereby certify that they are authorized to execute this Bond on behalf of the Principal and Surety and that the wording of this Bond is identical to the wording provided by EGLE.

Sealed with our seals, dated **[insert date of execution]**.

[insert NAME OF PRINCIPAL]
PRINCIPAL

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

[insert NAME OF SURETY]
SURETY

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

STATE OF MICHIGAN

By: _____
Signature

[insert name of Division Director], Division Director
Remediation and Redevelopment Division
Michigan Department of Environment, Great Lakes, and Energy

Date: _____